

**Introduced by Senator Beall**

January 26, 2016

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An act to amend Sections 16190 and 16191 of the Government Code, and to amend Sections 20505, 20583, 20627, 20639.11, 20640.2, 20640.3, 20640.5, and 20640.11 of the Revenue and Taxation Code, relating to taxation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 909, as introduced, Beall. Property tax postponement: special needs trust claimants.

Existing law authorizes the Controller, upon approval of a claim for the postponement of ad valorem property taxes, to directly pay a county tax collector for the property taxes owed by the claimant, as provided. Existing law requires all sums paid for the postponement of property taxes pursuant to these provisions to be secured by a lien in favor of the state. Amounts owed by a claimant are due if the claimant, or his or her surviving spouse, ceases to occupy the premises as his or her residential dwelling, dies, disposes of the property, or allows specified taxes and special assessments to become delinquent, as provided. Existing law requires that a claimant, generally, be an individual who is a member of the household, is either an owner-occupant, tenant stockholder occupant, or possessory interestholder occupant of the residential dwelling as to which postponement is claimed, and is either 62 years of age or older, blind, or disabled. Existing law requires a claimant to file a claim containing specified information under penalty of perjury.

This bill would provide that a claimant for property tax postponement also includes a special needs trust claimant, defined as a special needs trust of which the primary beneficiary is an individual who meets the

above-described criteria. The bill would also make various technical and conforming changes.

By requiring a special needs trust claimant for property tax postponement to file certain information under penalty of perjury, thereby expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 16190 of the Government Code, as  
2     amended by Section 4 of Chapter 391 of the Statutes of 2015, is  
3     amended to read:  
4     16190. All amounts owing pursuant to Article 1 (commencing  
5     with Section 16180) of this chapter shall become due if any of the  
6     following occurs:  
7     (a) The claimant, who is either the sole owner or sole possessory  
8     interestholder of the residential dwelling, as defined in Section  
9     20583 or Section 20640 of the Revenue and Taxation Code, or a  
10    coowner or copossessory interestholder with a person other than  
11    a spouse or other individual eligible to postpone property taxes  
12    pursuant to Chapter 2 (commencing with Section 20581), Chapter  
13    3 (commencing with Section 20625), Chapter 3.3 (commencing  
14    with Section 20639), or Chapter 3.5 (commencing with Section  
15    20640) of Part 10.5 of Division 2 of that code, *or, in the case of a*  
16    *special needs trust claimant, the beneficiary*, ceases to occupy the  
17    premises as his *or her* residential dwelling, dies, or sells, conveys,  
18    or disposes of the property, or allows any tax or special assessment  
19    on the premises described in Section 20583 of such code to become  
20    delinquent. If the sole owner or possessory interestholder claimant  
21    dies and his or her surviving spouse inherits the premises and  
22    continues to own and occupy it as his or her principal place of  
23    residence, then the lien amount does not become due and payable  
24    unless taxes or special assessments described in the preceding

1 sentence become delinquent, or such surviving spouse dies, or  
2 sells, conveys, or disposes of the interest in the property.

3 (b) The claimant, who is a coowner or copossessory  
4 interestholder of the residential dwelling, as defined in Section  
5 20583 or Section 20640.2 of the Revenue and Taxation Code, with  
6 a spouse or another individual eligible to postpone property taxes  
7 pursuant to Chapter 2 (commencing with Section 20581), Chapter  
8 3 (commencing with Section 20625), Chapter 3.3 (commencing  
9 with Section 20639), or Chapter 3.5 (commencing with Section  
10 20640) of Part 10.5 of Division 2 of that code, *or, in the case of a*  
11 *special needs trust claimant, the beneficiary*, dies, and the surviving  
12 spouse or other surviving eligible individual allows any tax or  
13 special assessment on the premises described in Section 20583 of  
14 such code to become delinquent or such surviving spouse or other  
15 individual ceases to occupy the premises as a residential dwelling,  
16 dies, or conveys, or disposes of the interest in the property.

17 (c) ~~The failure of the claimant fails~~ to perform those acts the  
18 claimant is required to perform where ~~such~~ *his or her* performance  
19 is secured, or will be secured in the event of nonperformance, by  
20 a lien which is senior to that of the lien provided by Section 16182.

21 (d) Postponement was erroneously allowed because eligibility  
22 requirements were not met.

23 (e) The claimant is refinancing the residential dwelling.

24 (f) The claimant has elected to participate in a reverse mortgage  
25 program for the residential dwelling.

26 SEC. 2. Section 16191 of the Government Code, as amended  
27 by Section 5 of Chapter 391 of the Statutes of 2015, is amended  
28 to read:

29 16191. The amounts paid pursuant to Section 16180 shall  
30 continue to draw interest but amounts owing pursuant to Article  
31 1 (commencing with Section 16180) of this chapter shall not  
32 become due and payable if any of the following occurs:

33 (a) ~~The claimant~~ *claimant, or, in the case of a special needs*  
34 *trust claimant, the beneficiary*, continues to own and occupy or  
35 hold the possessory interest and occupy the premises as a  
36 residential dwelling, but ceases to postpone property taxes pursuant  
37 to Chapter 2 (commencing with Section 20581), Chapter 3  
38 (commencing with Section 20625), Chapter 3.3 (commencing with  
39 Section 20639), or Chapter 3.5 (commencing with Section 20640)  
40 of Part 10.5 of Division 2 of the Revenue and Taxation Code, and

1 does not allow any tax or assessment against the premises, as  
2 described in Section 20583 of such code, to become delinquent.

3 (b) The surviving spouse of a ~~claimant~~ *claimant, or, in the case*  
4 *of a special needs trust claimant, the beneficiary*, continues to own  
5 and occupy or hold the possessory interest and occupy the premises  
6 as a residential dwelling, but is ineligible to postpone property  
7 taxes pursuant to Chapter 2 (commencing with Section 20581),  
8 Chapter 3 (commencing with Section 20625), Chapter 3.3  
9 (commencing with Section 20639), or Chapter 3.5 (commencing  
10 with Section 20640) of Part 10.5 of Division 2 of the Revenue and  
11 Taxation Code, or elects not to postpone such taxes, and does not  
12 allow any tax or assessment against the premises, as described in  
13 Section 20583 of such code, to become delinquent.

14 (c) The surviving individual otherwise eligible to postpone  
15 property taxes pursuant to Chapter 2 (commencing with Section  
16 20581), Chapter 3 (commencing with Section 20625), Chapter 3.3  
17 (commencing with Section 20639), or Chapter 3.5 (commencing  
18 with Section 20640) of Part 10.5 of Division 2 of the Revenue and  
19 Taxation Code continues to own and occupy or hold the possessory  
20 interest and occupy the premises as a residential dwelling, but  
21 elects not to postpone the property taxes pursuant to such chapter,  
22 and does not allow any tax or assessment against the premises, as  
23 described in Section 20583 of such code, to become delinquent.

24 SEC. 3. Section 20505 of the Revenue and Taxation Code, as  
25 amended by Section 8 of Chapter 391 of the Statutes of 2015, is  
26 amended to read:

27 20505. “Claimant” means an individual who—

28 (a) For purposes of this chapter was either (1) 62 years of age  
29 or older on the last day of the calendar year or approved fiscal year  
30 designated in subdivision (b) or (c) of Section 20503, whichever  
31 is applicable, or (2) blind or disabled, as defined in Section 12050  
32 of the Welfare and Institutions Code on the last day of the calendar  
33 year or approved fiscal year designated in subdivision (b) of  
34 Section 20503, who was a member of the household, and who was  
35 either: (1) the owner and occupier of a residential dwelling on the  
36 last day of the year designated in subdivision (b) or (c) of Section  
37 20503, or (2) the renter of a rented residence on or before the last  
38 day of the year designated in subdivision (b) of Section 20503. An  
39 individual who qualifies as an owner-claimant may not qualify as  
40 a renter-claimant for the same year.

(b) (1) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625), Chapter 3.3 (commencing with Section 20639), and Chapter 3.5 (commencing with Section ~~20640~~ 20640), was a member of the household and either an owner-occupant, or a tenant stockholder occupant, or a possessory interestholder occupant, or a mobilehome owner-occupant, as the case may be, of the residential dwelling as to which postponement is claimed on the last day of the year designated in subdivision (b) or (c) of Section 20503, and who was (1) 62 years of age or older by December 31 of the fiscal year for which postponement is claimed, or (2) blind or disabled, as defined in Section 12050 of the Welfare and Institutions Code, at the time of application or on December 10 of the fiscal year for which postponement is claimed, whichever is earlier.

(2) For purposes of this subdivision, “claimant” shall include a special needs trust claimant. “Special needs trust claimant” means a special needs trust of which the primary beneficiary is an individual who would qualify as a “claimant” pursuant to paragraph (1).

SEC. 4. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) “Residential dwelling” means a dwelling occupied as the principal place of residence of the claimant, *or, in the case of a special needs trust claimant, the beneficiary*, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, *the beneficiary of a special needs trust claimant*, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in subdivision (a), (b), or (c) of Section 20511 and located in this state. It shall include condominiums that are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(b) As used in this chapter in reference to ownership interests in residential dwellings, “owned” includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that

1 the instrument creating the life estate is recorded and only from  
2 the date of recordation of the instrument creating the life estate in  
3 the office of the county recorder where the residential dwelling is  
4 located, but “owned” does not include the interest of the holder of  
5 any remainder interest or the holder of a reversionary interest in  
6 the residential dwelling, (3) the interest of a joint tenant or a tenant  
7 in common in the residential dwelling or the interest of a tenant  
8 where title is held in tenancy by the entirety or a community  
9 property interest where title is held as community property, and  
10 (4) the interest in the residential dwelling in which the title is held  
11 in trust, as described in subdivision (d) of Section 62, provided  
12 that the Controller determines that the state’s interest is adequately  
13 protected.

14 (c) Except as provided in subdivision (c), and Chapter 3  
15 (commencing with Section 20625), ownership must be evidenced  
16 by an instrument duly recorded in the office of the county where  
17 the residential dwelling is located.

18 (d) “Residential dwelling” does not include any of the following:

19 (1) Any residential dwelling in which the owners do not have  
20 an equity of at least 40 percent of the full value of the property as  
21 determined for purposes of property taxation or at least 40 percent  
22 of the fair market value as determined by the Controller and where  
23 the Controller determines that the state’s interest is adequately  
24 protected. The 40-percent equity requirement shall be met each  
25 time the claimant or authorized agent files a postponement claim.

26 (2) Any residential dwelling in which the claimant’s interest is  
27 held pursuant to a contract of sale or under a life estate, unless the  
28 claimant obtains the written consent of the vendor under the  
29 contract of sale, or the holder of the reversionary interest upon  
30 termination of the life estate, for the postponement of taxes and  
31 the creation of a lien on the real property in favor of the state for  
32 amounts postponed pursuant to this act.

33 (3) Any residential dwelling on which the claimant does not  
34 receive a secured tax bill.

35 (4) Any residential dwelling in which the claimant’s interest is  
36 held as a possessory interest, except as provided in Chapter 3.5  
37 (commencing with Section 20640).

38 SEC. 5. Section 20627 of the Revenue and Taxation Code, as  
39 amended by Section 15 of Chapter 391 of the Statutes of 2015, is  
40 amended to read:

20627. (a) A tenant-stockholder claimant (hereinafter referred to as “claimant”) is an individual who, on the last day of the calendar year ending immediately prior to the commencement of the fiscal year for which postponement is claimed is: (a) a tenant-stockholder in a cooperative housing corporation (as defined in Section 216(b) of the Internal Revenue Code) and (b) occupies as a principal place of residence a residential unit in the cooperative housing corporation (notwithstanding Section 216(b) of the Internal Revenue Code). For the purposes of this chapter, a claimant must be (1) 62 years of age or older on or before December 31 of the fiscal year for which postponement is claimed or (2) blind or disabled, as defined in Section 12050 of the Welfare and Institutions Code, at the time of application or on December 10 of the fiscal year for which the postponement is claimed, whichever is earlier.

(b) For purposes of this chapter, “tenant-stockholder claimant” and “claimant” shall include a special needs trust claimant. “Special needs trust claimant” means a special needs trust of which the primary beneficiary is an individual who would qualify as a “tenant-stockholder claimant” or “claimant” pursuant to subdivision (a).

SEC. 6. Section 20639.11 of the Revenue and Taxation Code is amended to read:

20639.11. All amounts postponed pursuant to this chapter shall be due if any of the following occurs:

(a) ~~The claimant~~ claimant, or, in the case of a special needs trust claimant, the beneficiary, ceases to occupy the residential dwelling as the principal place of residence, sells, or otherwise disposes of his or her mobilehome.

(b) ~~The claimant~~ claimant, or, in the case of a special needs trust claimant, the beneficiary, dies. However, if the surviving spouse was previously approved pursuant to this chapter continues to occupy the mobilehome, then the postponed amounts shall not be due unless that person dies or ceases to occupy the residential dwelling.

(c) ~~The failure of a~~ claimant fails to perform those acts required by the legal owner or junior lienholder.

(d) The claimant allows any subsequent taxes to remain unpaid or to be transferred to the unsecured roll.

(e) Postponement was erroneously allowed because eligibility requirements were not met.

SEC. 7. Section 20640.2 of the Revenue and Taxation Code, as amended by Section 28 of Chapter 391 of the Statutes of 2015, is amended to read:

20640.2. For the purposes of this ~~chapter~~: *chapter, the following definitions shall apply:*

(a) “Possessory interest” means (1) possession of, or right to the possession of land located in this state whether or not coupled with ownership of the residential dwelling on the same, or (2) a possessory interest or right of occupancy on tax exempt ~~land~~; *land*.

(b) “Residential dwelling” means a dwelling occupied as the principal place of residence of the claimant, *or, in the case of a special needs trust claimant, the beneficiary*, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, located on possessory interest property. It shall include condominiums upon which property taxes, as defined in subdivision (c), are assessed. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(c) “Property taxes” means the amount of property tax for which the claimant is personally liable as assessee or is obligated to pay directly to the tax collector pursuant to the terms of the agreement establishing the possessory interest, including all ad valorem property taxes, special assessments, capitalization of leasehold interest, and other charges or user fees which are attributable to the residential dwelling on the county tax bill and the ad valorem property taxes, special assessments, capitalization of leasehold interest, or other charges or user fees appearing on the tax bill of any chartered city which levies and collects its own property taxes.

SEC. 8. Section 20640.3 of the Revenue and Taxation Code, as amended by Section 29 of Chapter 391 of the Statutes of 2015, is amended to read:

20640.3. (a) A claimant is an individual who:

(a)

(1) Holds a right to a possessory interest pursuant to a validly recorded instrument conveying such possessory interest for a term of years no less than 45 years beyond the last day of the calendar year ending immediately prior to the fiscal year for which taxes are initially postponed;



1     ~~(b)~~

2     (2) Occupies as a principal place of residence the residential  
3 dwelling affixed to such possessory interest real property on the  
4 last day of the year designated in *subdivision (c) of Section*  
5 ~~20503(e)~~ 20503 of this code;

6     ~~(e)~~

7     (3) ~~(1)~~—Is (1) 62 years of age or older on or before December  
8 31 of the fiscal year for which postponement is claimed or (2)  
9 blind or disabled, as defined in Section 12050 of the Welfare and  
10 Institutions Code, at the time of application or on December 10 of  
11 the fiscal year for which the postponement is claimed, whichever  
12 is earlier.

13     (b) *For purposes of this chapter, “claimant” shall include a*  
14 *special needs trust claimant. “Special needs trust claimant” means*  
15 *a special needs trust of which the beneficiary is an individual who*  
16 *would qualify as a “claimant” pursuant to subdivision (a).*

17     SEC. 9. Section 20640.5 of the Revenue and Taxation Code  
18 is amended to read:

19     20640.5. (a) The Controller may require as security for the  
20 postponement of property taxes pursuant to this chapter any of the  
21 following:

22     ~~1.~~

23     (1) An assignment to the State of California of the remaining  
24 term of the claimant’s *or, in the case of a special needs trust*  
25 *claimant, the beneficiary’s*, possessory interest.

26     ~~2.~~

27     (2) A security interest in any improvement owned or leased by  
28 *the claimant or, in the case of a special needs trust claimant, the*  
29 *beneficiary*, located on the land which is subject to the possessory  
30 interest.

31     ~~3.~~

32     (3) Any other additional security interest, created and perfected  
33 with respect to the rights of third persons in the manner provided  
34 by law for such type of security interest, which the Controller  
35 deems necessary to protect the interest of the state with regard to  
36 the repayment of postponed amounts by the claimant or a deceased  
37 claimant’s estate.

38     (b) On the form supplied by the Controller, the claimant shall  
39 obtain the written consent of any coholder of the possessory interest  
40 and of the grantor of the possessory interest to the assignment by

1 claimant of the remaining term of claimant's *or, in the case of a*  
2 *special needs trust claimant, the beneficiary's* possessory interest.  
3 The consent shall be in ~~such~~ *the* form and contain ~~such~~ *those*  
4 provisions as *prescribed by the* ~~Controller shall prescribe,~~  
5 *Controller,* and shall provide for written notice by the grantor of  
6 the possessory interest to the Controller of the occurrence of a  
7 default by the claimant under the terms of the instrument creating  
8 the possessory interest, a coholder or a prior recorded possessory  
9 interest holder which would result in the termination or diminution  
10 of claimant's *or the beneficiary's, as applicable,* interest.

11 The term "grantor of the possessory interest," as used in this  
12 section shall be deemed to include the fee owner of the real  
13 property subject to the possessory interest and the holders of all  
14 prior recorded untermiated possessory interests.

15 SEC. 10. Section 20640.11 of the Revenue and Taxation Code  
16 is amended to read:

17 20640.11. All amounts postponed pursuant to this chapter shall  
18 be due if any of the following occurs:

19 (a) ~~The claimant~~ *claimant, or, in the case of a special needs*  
20 *trust claimant, the beneficiary,* ceases to occupy the residential  
21 dwelling as the principal place of residence, sells or otherwise  
22 disposes of his possessory interest, or the possessory interest  
23 agreement expires by its terms.

24 (b) ~~The claimant~~ *claimant, or, in the case of a special needs*  
25 *trust claimant, the beneficiary,* dies. However, if the surviving  
26 spouse or another person eligible to postpone pursuant to this  
27 chapter continues to occupy the residential dwelling, then the  
28 postponed amounts shall not be due unless such person dies, or  
29 ceases to occupy the residential dwelling.

30 (c) The failure of the claimant, the fee title owner, or any owner  
31 of a prior recorded possessory interest to perform those acts  
32 required by a security interest holder which is senior to the state's  
33 security interest for postponed amounts.

34 (d) Postponement was erroneously allowed because eligibility  
35 requirements were not met.

36 SEC. 11. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

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